



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2018-0838; FRL-10006-95-Region 4]

Air Plan Approval; Tennessee; Volatile Organic Compounds Definition Rule Revision for

Chattanooga

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Chattanooga portion of the Tennessee State Implementation Plan (SIP), provided by the Tennessee Department of Environment and Conservation on behalf of the Chattanooga–Hamilton County Air Pollution Control Bureau (Bureau) through a letter dated September 12, 2018. The revision makes changes to the definition of volatile organic compounds (VOC) that are consistent with changes to state and federal regulations. EPA is approving the changes because they are consistent with the Clean Air Act (CAA or Act).

DATES: This rule will be effective **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R04-OAR-2018-0838. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly

available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division (formerly the Air, Pesticides and Toxics Management Division), U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Evan Adams of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9009. Mr. Adams can also be reached via electronic mail at adams.evan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

EPA is taking final action to approve changes to the Chattanooga portion of the Tennessee SIP¹ that were provided to EPA through a letter dated September 12, 2018.² EPA is finalizing approval of the portions of this SIP revision that make changes to air quality rules in

¹ The Bureau is comprised of Hamilton County and the municipalities of Chattanooga, Collegedale, East Ridge, Lakesite, Lookout Mountain, Red Bank, Ridgeside, Signal Mountain, Soddy Daisy, and Walden. The Bureau recommends regulatory revisions, which are subsequently adopted by the eleven jurisdictions. The Bureau then implements and enforces the regulations, as necessary, in each jurisdiction.

² EPA received the SIP revision on September 18, 2018.

Chattanooga Ordinance Part II, Chapter 4, Section 4-2, *Definitions*.^{3, 4, 5} The September 12, 2018, SIP revision makes changes to the definition of “Volatile Organic Compounds” in paragraphs 1 and 2 of that section to make the Chattanooga portion consistent with changes to Federal and SIP-approved Tennessee regulations.

In a notice of proposed rulemaking (NPRM) published on May 20, 2019 (84 FR 22786), EPA proposed to approve the aforementioned changes to Part II, Chapter 4, Section 4-2, *Definitions*, in the Chattanooga portion of the Tennessee SIP. The NPRM provides additional details regarding EPA’s action. Comments on the NPRM were due on or before June 19, 2019. EPA received one comment on the proposed action. That comment is discussed below. EPA issued a minor clarification of its May 20, 2019 NPRM in a second NPRM published on November 25, 2019 (84 FR 64806) which also included a proposal to approve changes to Chattanooga’s SIP-approved open burning rules. EPA received two comments on the proposed action regarding the open burning rules, which are not relevant to the changes to Part II, Chapter 4, Section 4-2, *Definitions* and will be addressed in a separate final action.

II. Response to Comment

Comment: The Commenter asks why EPA needs to approve this SIP revision and

³ In this final action, EPA is also approving substantively identical changes in the following sections of the Air Pollution Control Regulations/Ordinances for the remaining jurisdictions within the Bureau, which were locally effective as of the relevant dates below: Hamilton County – Section 2 (9/6/17); City of Collegedale – Section 14-302 (10/16/17); City of East Ridge – Section 8-2 (10/12/17); City of Lakesite – Section 14-2 (11/2/17); City of Red Bank – Section 20-2 (11/21/17); City of Soddy-Daisy – Section 8-2 (10/5/17); City of Lookout Mountain – Section 2 (11/14/17); City of Ridgeside – Section 2 (1/16/18); City of Signal Mountain – Section 2 (10/20/17); and Town of Walden – Section 2 (10/16/17).

⁴ Because the air pollution control regulations/ordinances adopted by the jurisdictions within the Bureau are substantively identical, EPA refers solely to Chattanooga and the Chattanooga rules throughout the notice as representative of the other ten jurisdictions for brevity and simplicity.

⁵ EPA finalized its approval of a separate portion of the September 12, 2018 SIP submittal through a July 31, 2019 (84 FR 37099) rulemaking. EPA will act on the remaining portions of the September 12, 2018 submittal in a separate action.

suggests that states should not have to update their regulations and SIP whenever EPA changes a definition. The Commenter also suggests that EPA should establish a policy exempting such changes from needing a SIP revision and EPA approval.

Response: Although the purpose of the SIP revision is to make the definition of VOC in the Chattanooga portion of the Tennessee SIP consistent with the definition of VOC in the Federal and SIP-approved Tennessee regulations, EPA did not impose a requirement that Tennessee or the Bureau, or any other state or local entity, revise its SIP to adopt the changes to the Federal definition that are addressed in the September 12, 2018 SIP revision. As explained herein and in the NPRM, *see* 84 FR at 22786, the Bureau, through Tennessee, requested this SIP revision, which has the effect of excluding additional compounds regulated as VOC. Pursuant to CAA section 110(k)(3), 42 U.S.C. 7410(k)(3), “EPA shall approve” a SIP revision “if it meets all of the applicable requirements” of the Act. Thus, as a matter of law, EPA is required to approve a SIP revision if it meets the Act’s requirements, as this Tennessee SIP revision does.

To the extent the Commenter is suggesting EPA establish a policy regarding such SIP revisions, EPA acknowledges the comment but notes that it is outside the scope of the action and does not require a substantive response.

III. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Chattanooga City Code, Part II, Chapter 4, Section 4-2, locally effective on

October 3, 2017,⁶ which make changes to definitions.⁷ EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.⁸

IV. Final Action

EPA is taking final action to approve the changes to the definition of VOC in Chapter 4 of Part II, Section 4-2, of the Chattanooga portion of the Tennessee SIP because the changes are consistent with section 110 of the CAA.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

⁶ In the May 20, 2019, NPRM, EPA inadvertently misidentified the locally effective date for Chattanooga’s Section 4-2 as January 23, 2017. The correct date is October 3, 2017.

⁷ EPA’s approval also includes regulations/ordinances submitted for the other ten jurisdictions within the Bureau. *See* footnote 3, *supra*.

⁸ *See* 62 FR 27968 (May 22, 1997).

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be

filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Volatile organic compounds.

Dated: February 13, 2020.

Mary S. Walker,
Regional Administrator,
Region 4.

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart RR–Tennessee

2. In § 52.2220, in paragraph (c), amend Table 4 by revising the entry for “Section 4-2” under the heading “Article I. In General” to read as follows:

§ 52.2220 Identification of plan.

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(c) * * *

TABLE 4 – EPA APPROVED CHATTANOOGA REGULATIONS

State section	Title/subject	Adoption date	EPA approval date	Explanation
Article I. In General				
**	**	*	*	*

Section 4-2	Definitions	10/3/17	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	EPA's approval includes the following sections of the Air Pollution Control Regulations/Ordinances for the remaining jurisdictions within the Chattanooga-Hamilton County Air Pollution Control Bureau, which were locally effective as of the relevant dates below: Hamilton County – Section 2 (9/6/17); City of Collegedale – Section 14-302 (10/16/17); City of East Ridge – Section 8-2 (10/12/17); City of Lakesite – Section 14-2 (11/2/17); City of Red Bank – Section 20-2 (11/21/17); City of Soddy-Daisy – Section 8-2 (10/5/17); City of Lookout Mountain – Section 2 (11/14/17); City of Ridgeside – Section 2 (1/16/18); City of Signal Mountain – Section 2 (10/20/17); and City of Walden – Section 2 (10/16/17).
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[FR Doc. 2020-05913 Filed: 3/25/2020 8:45 am; Publication Date: 3/26/2020]